***MAHARASHTRA ADMINISTRATIVE* TRIBUNAL,**

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.931/2012. (D.B.)

Sanjay Madanrao Kesarkar,
Aged about 52 years,
Occ-Nil,
R/o Plot No.D-10 Near Gupta Nursing Home,
Laxmi Nagar, Nagpur. **Applicant.**

-**Versus-**

1. The State of Maharashtra,
   Through its Secretary,
   Public Works Department,
   Mantralaya, Mumbai-32.

2. The Chief Engineer,
   Public Works Department,
   Nagpur Region, Nagpur. **Respondents**

Shri P.C. Marpakwar, the Ld. Advocate for the applicant.
Shri V.A. Kulkarni, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shri Shee Bhagwan, Member (A)

JUDGMENT

(Delivered on this 22nd day of October 2018.)

Per:Vice-Chairman (J)

Heard Shri P.C. Marpakwar, the learned counsel for the applicant and Shri V.A. Kulkarni, the learned P.O. for the respondents.

2. The applicant in this O.A. was Assistant Chief Engineer at the time when the impugned order of his dismissal was served on him. Departmental enquiry pertains to the period from 17.11.1997 to 10.9.1999 when he was serving as Executive Engineer in the Public Works Department (Western Division), Aurangabad.

3. The applicant has challenged the order of his dismissal dated 30.12.2010 issued by the Government of Maharashtra i.e. the appointing authority and also the passed in appeal against the said order by the Hon'ble Deputy Chief Minister of the Maharashtra State dated 18.9.2012, whereby the order of dismissal has been confirmed. Both these impugned orders are at Annexure A-1, Page Nos. 93 to 108 and 109 to 113 (both inclusive) respectively.

4. From the charges framed in the departmental enquiry against the applicant, it seems that as many as 29 charges were framed against the applicant. The said charges are as under:-

"**बाब एक:**- किरकोळ दुरुस्ती अंतर्गत रस्त्यांच्या कामांना तांत्रिक मान्यता देताना अनुद्नेय निधीचा विचार न करता अंदाजपत्रकांना मोठ्या प्रमाणात मान्यता दिली. त्यामुळे खर्चावर नियंत्रण राहिले नाही.

"**बाब दोन:**- किरकोळ दुरुस्ती अंतर्गत रस्त्यांच्या कामाची आवश्यक्ता, कामाचे स्वरूप, कामे हाती घेणेबाबत वरिष्ठांची निरीक्षण टिप्पणी असा कोणताही निकष न लावता सर्रासपणे अंदाजपत्रके मंजूर केली.

"**बाब तीन:**- इमारतीची किरकोळ दुरुस्तीची कामे हाती घेताना कामाची आवश्यक्ता, कामाचे स्वरूप, उपभोक्ता खात्याची मागणी इत्यादी बाबींचा विचार न करता मोठ्या प्रमाणात इमारतीच्या दुरुस्तीची कामे हाती घेतली.

बाब चार:- एका रस्त्यासाठी किरकोळ दुरुस्तीचे एकच वार्षिक अंदाजपत्रक मंजूर न करता एका रस्त्यासाठी दुरुस्तीची अनेक अंदाजपत्रके घेतली.

बाब पाच:- विभागीय स्तरावर ठेवण्यात आलेली रस्त्याच्या कामासाठीची तांत्रिक मान्यता नोंद्वहीमध्ये बदहेतुने कोऱ्या जागा व कोरे क्रमांक सोडले.

बाब सहा :- विभागीय स्तरावर ठेवण्यात आलेल्या इमारतीच्या तांत्रिक मान्यता नोंदवहीतील काही क्रमांक कोरे मांडले. तसेच तांत्रिक मान्यता नोंदवहीवर शेवटच्या रकान्यात स्वतःची स्वाक्षरी केली नाही.

बाब सात :- किरकोळ दुरुस्ती कामांची अंदाजपत्रके तयार करण्याचे काम प्रतिवर्षी १५ जानेवारीला हाती घेऊन १५ एप्रिल पर्यंत सगळ्या कामांना तांत्रिक मान्यता देणे आवश्यक असताना वर्षभर किरकोळ दुरुस्ती अंदाजपत्रके मंजूर केली.

बाब आठ:- किरकोळ दुरुस्ती कार्यक्रमांतर्गत मूळ स्वारुपाची तसेच विशेष दुरुस्ती स्वरुपाची कामे हाती घेतली.

बाब नऊ- दुरुस्ती कामाचे टाळता येण्याजोगे तुकडे केले.

बाब दहा:- उपनिबंधक सहकारी संस्था कार्यालयाकडून प्राप्त शिफारसपत्रावर जा. क्र./दिनांक इ. तपशील नसताना मजूर सहकारी संस्थांशी कामांचे करारनामे केले.

बाब अकरा:- रस्त्यावरील दुरुस्तीची कामे करताना मजूर सहकारी संस्थांकडून कोऱ्या निविदांचे शुल्क वसूल केले नाही. त्यामुळे शासनाचे आर्थिक नुकसान झाले.

बाब बारा:- मजूर सहकारी संस्थांना एकाच वेळी तीन पेक्षा जास्त कामे दिली.

बाब तेरा:- मजूर सहकारी संस्थांना कुशल स्वरुपाची कामे दिली.

बाब चौदा:- काही कामाच्या निविदा १० टक्क्यापेक्षा कमी दराच्या असुनही अशा कामांची कमी किमतीची घटीत अंदाजपत्रके तयार केली नाहीत.

बाब पंधरा:- देयकांवर कामांचे साखळी क्रमांक/निविदा क्रमांक/दिनांक, मापे नोंदविणाऱ्या शाखा अभियंत्यांचे नाव/मोजमाप पुस्तक क्रमांक इत्यादी तपशील नोंदविलेल्या नसताना सुद्धा देयके मंजूर केली.

बाब सोळा:- देयकावर उप-अभियंत्यांच्या स्वाक्षऱ्या नसतानाही किरकोळ दुरुस्ती कामांची देयके मंजूर केली.

बाब सतरा:- मोजमाप पुस्तकावर कन्त्राटदाराची देयके मान्य असल्याबाबतची स्वाक्षरी नसताना धनादेश प्रदान केले.

बाब अठरा:- देयके मंजूर करताना देयकात अंतर्भूत असलेल्या बाबींची मोजमापे जेथे लिहिली आहेत त्या पानांवर तिरक्या लाल शाईच्या काटरेषा मारलेल्या नसतानाही देयके मंजूर केली.

बाब एकोणीस:- कन्त्राटदाराना द्यावयाच्या धनादेशात खाडाखोड केली, अनेक ठिकाणी कन्त्राटदाराचे नाव बदलले. तसेच रकमा बदलल्या.

बाब वीस:- रस्ते / इमारतीच्या किरकोळ दुरुस्ती कामांचे लेखे दि. ३१ मार्च रोजी बंद करावयाचे असताना त्यांनी दिनांक ३१.३.१९९९ रोजी किरकोळ दुरुस्तीसाठीच्या २०९ निविदा स्वीकारून कार्यारंभ आदेश दिलेत.

बाब एकवीस:- औरंगाबाद जिल्हा परिषद (बांधकाम) विभागाकडे देखभाल व दुरुस्तीसाठी असलेल्या रस्त्यावर देखील देखभाल दुरुस्तीसाठी खर्च केला.

बाब बावीस:- पूरहानी दुरुस्ती कार्यक्रम अधीक्षक अभियंता यांचेकडून मंजूर नसताना (कामांना कार्यक्रमांक नसताना) अशा कामांवर रु. १५.५९ लक्ष एवढा खर्च केला.

बाब तेवीस:- किरकोळ दुरुस्ती अन्तर्गत जुन्या कामांवर सन १९९९-२००० मध्ये खर्च केला.

बाब चोवीस:- किरकोळ दुरुस्ती लेखाशिर्षावर मंजूर पत्मर्यादेपेक्षा जास्त निधी खर्च केला.

बाब पंचवीस:- पतपत्र उपलब्ध नसताना मोठ्या प्रमाणात ना- पतपत्र धनादेश काढून रस्ते / इमारती दुरुस्ती या लेखाशीर्षाखाली प्रचंड प्रमाणात खर्च केला.

बाब सव्विस:- उपविभागाकडून प्राप्त झालेल्या खोट्या मोजमापांवर आधारित १३५ कामांच्या देयकांना आक्षेप न घेता ही देयके मंजूर केली.

बाब सत्तावीस:- उपविभागाकडून प्राप्त खोट्या मोजमापांवर आधारित १३५ कामांच्या देयकांची अदायगी केली. त्यामुळे शासनाचे रु.२,२१,३२,७३१/- एवढे आर्थिक नुकसान झाले/ त्यापैकी रु. ५५,३३,१८३/- रकमेस श्री. एस.एम. केशरकर, का.अ. हे जबाबदार आहेत.

बाब अट्ठावीस:- रस्त्याच्या बाजूला नाली खोदकाम करणे, रस्त्याचे भरावासाठी मातीकर करणे, बाजुपत्त्यांवर मोठ्या प्रमाणात मुरूम टाकणे, इमारतींच्या परिसरात झाडे लावणे, इमारतींना वाळवी प्रतिबंधक उपाय-योजना करणे, अशी अनावश्यक कामे कार्यान्वित केली. तसेच खड्डे भरण्यासाठी हाताने फोडलेली ४० मी.मी. खडी न वापरता क्रशर मशीनने फोडलेली महागडी खडी वापरणे, आवश्यकतेपेक्षा जास्त डांबराचा वापर

करणे तसेच खड्डे भरण्यासाठी विहित मानकापेक्षा जास्त खर्च करणे असा अनावश्यकपणे जास्त खर्च केला. त्यामुळे शासनाचा र. १,२७,७७,६२९/- एवढा टाळता येण्याजोगा खर्च झाला. त्यापैकी रु.३१,९४,४०७/- एवढ्या रकमेसाठी श्री. एस.एम. केशरकर, का.अ. हे जबाबदार आहेत.

बाब एकोणतीस:- विभागाच्या कामकाजावर नियंत्रण ठेवले नाही."

5. The Enquiry Report was submitted on 21.10.2000 which is at Annexure A-7. The Enquiry Officer found that the charges at Sr. Nos. 1,3,4,5,6,7,10,11,12,14, 16,19,20,21,22 and 24 to 29 were not proved and charge Nos. 2,8,15, 17, 18 and 23 were partly proved, where charge Nos. 9 and 13 were proved.

6. Report of the Enquiry Officer was received by the Government i.e. the appointing authority. The disciplinary authority did not agree with the negative findings of the Inquiry Officer on certain charges and also on the findings that some of the charges were proved partially. The disciplinary authority, therefore, recorded its own findings disagreeing with the negative findings given by the Enquiry Officer. The said report of disagreement including the reasons for such disagreement was served on the applicant as per letter dated 21.8.2004 at Annexure A-8 alongwith the report and findings recorded by the disciplinary authority.

7. The applicant was given an opportunity to submit his written statement on the said show cause notice. Accordingly,

the applicant submitted reply and, as already stated, the applicant was dismissed. The appeal against the order of dismissal has also been rejected and, therefore, this O.A.

8. The learned counsel for the applicant submits that the applicant was not given an opportunity to put his case. According to him, the Enquiry Officer submitted his report on 21.10.2002 which was kept without any action till 21.8.2004. Report not agreeing with the Enquiry Officer alongwith a show cause notice was received by the applicant on 23.8.2004 and he was directed to submit his explanation within seven days. The applicant accordingly submitted his explanation on 28.8.2004. It is, therefore, stated that the applicant was not given sufficient opportunity to explain adverse circumstances against him and to put his case. The submission of the learned counsel for the applicant as regards the fact that no action was taken against the applicant on the report of the Enquiry Officer for two years, seems to be true.

9. But it can be understood from the fact that the disciplinary authority did not agree with the report submitted by the Enquiry Officer and has recorded its own findings for such disagreement, as can be seen from the report alongwith Exh.A-8 dated 21.8.2004.

10. Findings recorded by the disciplinary authority are at page Nos. 516 to 540. We have perused the said findings and it clearly shows that the disciplinary authority has gone through the entire record which is very bulky and recorded its own findings on the charges which were alleged to be either not proved or partially proved. The applicant has already submitted his explanation on 28.8.2004 to such findings and, therefore, it cannot be said that opportunity was not given to the applicant, only because he was directed to file his explanation within seven days.

11. The learned counsel for the applicant submits that the applicant sought for number of documents. But the same were not supplied to him and the witnesses mentioned by him were not allowed to be examined. In this regard, the learned counsel for the applicant has invited our attention to one application, a copy of which is placed on record at Page No.658. In fact, the said document (Annexure A-14) is not legible and, therefore, it is not clear as to which document the applicant wanted to refer. Even for argument sake, it is accepted that such application was moved before the Enquiry Officer, it is not known as to whether such documents were relevant or not to the enquiry. We have also perused the report of enquiry which refers to list of documents referred to and handed

over to the applicant before initiation of enquiry. It also states about the list of witnesses to be examined by the department. There is nothing on record to show that, the applicant ever challenged or agitated the point of not getting documents before the Enquiry Officer and, therefore, for the first time; said contention that the documents were not supplied to him or defence witnesses were not allowed to be examined, cannot be accepted. Had it been a fact that the applicant was in need of the documents and those documents were really relevant, the applicant should have filed an application before the Enquiry Officer and the same ground should have been agitated even before the appellate authority. However, there is no material on record to show that any such point was raised or the documents claimed by the applicant, were relevant.

12. So far as the list of witnesses alleged to be submitted by the applicant is concerned, copy of such list is at Page No.663, which is dated 14.12.2001, from which, it seems that the applicant wanted to examine as many as 11 witnesses. However, there is nothing on record to show that, he ever tried to examine those witnesses or ever requested the Enquiry Officer to summons those witnesses. It seems from the record that, the witnesses were examined by the department and they were cross-examined on

behalf of the applicant. Not only that, the applicant also filed detailed explanation and replied to the charges and the Enquiry Officer had gone through all the documents placed on record which are more than hundreds in number. **The applicant was also allowed to examine himself and witnesses**.

13. We have perused the Enquiry Report, from which we are satisfied that the Enquiry Officer has applied his mind while coming to the conclusion and some of the conclusions drawn by the Enquiry Officer were not found to be proper.

14. We have also perused the findings recorded by the disciplinary authority (Annexure A-8) at page Nos. 515 to 540 (both inclusive). The disciplinary authority has reconsidered the documents and witnesses and found that the Enquiry Officer had wrongly recorded some of the findings whereby the applicant was found not guilty or some of the charges were found partially proved. Reasons for not agreeing with the Enquiry Officer are recorded in details alongwith reference to the documentary evidence as well as evidence on record and the disciplinary authority came to the conclusion that the charge Nos. 4, 12 and 28 were fully proved, whereas charge Nos. 7,11,20,26 and 27 were proved partially. All these observations are well supported and the Disciplinary Authority has given in details,

the reasons for such disagreement. Admittedly, the disciplinary authority has every right to disagree with the findings given by the Enquiry Officer and to record its own findings. The only obligation on the disciplinary authority is that such report disagreeing with the findings of the Enquiry Officer has to be supplied to the delinquent and he shall have given an opportunity to submit his explanation. Admittedly, report disagreeing with some of the findings of Enquiry Officer was served on the applicant and the applicant was given full opportunity to explain the circumstances and after going through the report, some documents and evidence placed on record and also explanation of the applicant, the disciplinary authority came to the conclusion that it is a fit case where the applicant shall be dismissed. The impugned order dated 30.12.2010 whereby the applicant has been dismissed from service is also exhaustive. It seems that the disciplinary authority has considered the allegations, explanation given by the applicant, the evidence on record, so also and documents and statement of defence and after giving full opportunity to the applicant, decision was taken. From the findings given by the Enquiry Officer, the disciplinary authority as well as the appellate authority, it seems that the applicant being Executive Engineer and the Head of the Division was bound to follow the rules and

regulations and was more responsible officer. Due to his negligence, financial loss has been caused to the Government which is huge and, therefore, decision was taken to dismiss the applicant.

15. The learned counsel for the applicant invited our attention to the fact that the respondent has given discriminatory treatment to the applicant. It is submitted that, the enquiry was initiated against 21 officers including the applicant. However, very lenient view has been taken in respect of other 20 officers, whereas the applicant has been dealt with iron hands for the similar charges.

16. We have perused the order of appellate authority. It seems that the applicant was heard on this point by the appellate authority and the appellate authority has considered the said contention. The relevant observation in this regard is as under:-

> "या शिक्षा आदेशाविरुद्ध श्री. एस. एस.केसरकर यांनी मा. राज्यपाल यांचेकडे दि. १४.१.२०११ व १९.१.२०११ अन्वये पुनर्विलोकन अर्ज सादर केला. सदर पुनर्विलोकन अर्जाची मा. राज्यपाल महोदयांच्या वतीने सुनावणी घेऊन त्यावर निर्णय देण्याचे अधिकार मला प्रदान करण्यात आले. त्यानुसार या पुनर्विलोकन अर्जाची माझ्याकडे दि. २६.४.२०१२ रोजी सुनावणी ठेवण्यात आली. या सुनावणीसाठी अपिलार्थी श्री. एस. एस.केसरकर तसेच सा. बां. विभागाचे अधिकारी उपस्थित होते. सुनावणीच्या वेळी श्री. केसरकर तसेच सा. बां. विभागाच्या अधिकाऱ्यांचे म्हणणे ऐकून

घेतले. श्री. एस. एस. केसरकर, माजी सहाय्यक मुख्य अभियंता यांनी प्रस्तुत प्रकरणी सादर केलेला लेखी अर्ज विचारात घ्यावा. तसेच या प्रकरणी इतर २० अधिकाऱ्यांना दिलेली सौम्य शिक्षा विचारात घेऊन मला त्याप्रमाणे सौम्य शिक्षा देऊन सेवेत पुनःस्थापित करून न्याय द्यावा, अशी तोंडी विनंती माझ्याकडे केली.

सा. बां. विभागाच्या प्रस्तुत प्रकारणांची नसती क्र. डीपीए-१०९९/प्र. क्र. ३६०/सेवा-६ तसेच श्री. केसरकर यांच्याविरुद्ध ठेवलेले दोषारोप, त्या संदर्भातील चौकशी अधिकाऱ्यांचा अहवाल, पुनर्विलोकन अर्ज व या सुनावणी दरम्यान सादर केलेले दि. २६.४.२०१२ रोजीचे निवेदन या सर्व कागदपत्रांचे मी बारकाईने परिशीलन केले. त्यावरून असे दिसून येते कि, एकंदरीत प्रस्तुत प्रकरणी अपिलार्थी श्री. एस. एस.केसरकर, सहाय्यक मुख्य अभियंता यांच्या प्रकरणी शिस्तभंगविषयक प्राधिकारी म्हणजे सा. बां. विभाग यांनी वरील प्रमाणे दिलेले निष्कर्ष योग्य आहे व त्यासाठी श्री. केसरकर यांना दिलेली शासन सेवेतून बडतर्फी करण्यात यावे, ही शिक्षा योग्य आहे व त्यामध्ये बदल करण्यासारखा कोणताही मुद्दा श्री. केसरकर यांनी मांडलेला नाही."

17. From the said observation, we find that even though the applicant raised a point that 20 other officers in the same enquiry were given less punishment than the applicant, The Appellate Authority recorded its findings as to why view taken in respect of the

applicant was proper. The appellate authority seems to have considered the contention raised by the applicant as regards less punishment to other 20 officers in similar loss. It must be seen that, though it may be true that the responsibility of the applicant must be more than other officers. However, this has not been reflected in the applicant.

18. The learned counsel for the applicant has also invited our attention to certain facts of the case, from which it seems that the applicant was kept under suspension in this case on 31.1.2000. Charge-sheet was filed against him on 15.1.2001. Enquiry Report was submitted on 21.10.2002 to the disciplinary authority. The disciplinary authority, however, sat idle on the said report for about two years and on 21.8.2004 findings were recorded, whereby the disciplinary authority did not agree with some of the findings of the Enquiry Officer. The said report was received by the applicant on 23.8.2004 and he was directed to file explanation within seven days, which he promptly filed on 28.8.2004. It is also pertinent to note that, after receiving explanation, the applicant was reinstated in service on 8.10.2004 and he continued to work till final punishment order was passed on 30.12.2010. The final punishment order seems to have been issued only after the applicant himself has filed one

application on 28.8.2009, whereby he had requested to drop the enquiry and after receiving such an application, final order of punishment of dismissal was passed on 30.12.2010. The applicant thereafter filed an appeal to the Hon'ble Governor of Maharashtra. Since no decision was taken on the appeal, he filed O.A. No.108/2011 which was withdrawn on 9.8.2011 with liberty to pursue that appeal before the Hon'ble Governor of Maharashtra and finally appeal was dismissed on 18.9.2012. All these mitigating facts are not considered by the appellate authority while maintaining the order of the disciplinary authority.

19. The applicant has placed on record the order of the disciplinary authority in respect of 19 other officers who have also undergone the joint enquiry alongwith the applicant. He received copies of these orders under the Right to Information Act and the same has been placed alongwith Annexure A-10 at page Nos.576 to 645 (both inclusive). From the said order, it seems that very lenient view has been taken in respect of the Sub-Divisional Engineers and the Assistant Engineers, who were also found responsible for financial loss caused to the Government and negligence in the duty alongwith the applicant. In our opinion, all the circumstances must have been considered by the appellate authority, when admittedly the

applicant has requested to the appellate authority i.e. the Hon'ble Minister to deal his case with leniency.

20. In view of the submission as referred to above, we have perused the order passed by the appellate authority i.e. the Hon'ble Deputy Chief Minister. From perusal of the charges framed against the applicant, particularly charges which are proved as per charge Nos. 4 to 27, 28 and 29, it seems that as per proved charge No.27, because of negligence on the part of the applicant, the Government has been caused with a loss of Rs. 2,21,37,731/- and out of this loss, the applicant is responsible for the loss of Rs. 55,33,183/-. As per charge No.28, it is alleged that because of negligence of the applicant, the Govt. was put to a loss to the tune of Rs.1,27,77,629/-, out of which, the applicant is held responsible for the loss of Rs.31,94,407/-, whereas as per charge No.29, it is alleged that the applicant is responsible for a loss to the tune of Rs. 25,68,011/- and excess amount of Rs. 1,47,541/-, considering the fact that the applicant was Head of the Division and was responsible for such a huge loss caused to the Government, the appellate authority must have though it proper to maintain the order of dismissal and, therefore, we do not find any reason to interfere in such findings merely on the ground that it was not specifically

mentioned that the plea of leniency was not specifically considered by the appellate authority. Hence, we proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice-Chairman (J)

Dated:- 22.10.2018.

pdg